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BEFORE THE

**FEDERAL COMMUNICATIONS COMMISSION**

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WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**In the Matter of**

**Relicensing of Certain Part 90  
Frequencies to Require Spectrally  
Efficient Use**

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**RM 9705**

**To: The Commission**

**Opposition of Mobex Communications, Inc.**

Mobex Communications, Inc. ("Mobex"), pursuant to Section 1.405 of the Commission's rules and in response to the Public Notice released August 24, 1999, hereby submit its Opposition to the Petition for Rulemaking ("Petition"), filed by the American Mobile Telecommunications Association ("AMTA"). As demonstrated below, the Petition, -- which requests that the Commission relocate all private wireless licensees authorized in the 450-470 MHz band to 2 MHz of spectrum and assign the remaining 10 MHz of non-government spectrum through competitive bidding -- is out of touch with the needs of current and future UHF users and should be summarily dismissed.

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## **I. Introduction**

1. The Commission currently has before it a Petition submitted by AMTA requesting that the Commission divide all non-public safety pool spectrum in the 450-470 MHz band into a 2 MHz allocation for shared use; forcibly relocate all private wireless incumbents to this 2 MHz block; and allocate 10 MHz of spectrum to be assigned via auctions. AMTA argues that the current regulatory environment for the frequencies in question does not meet the needs of AMTA's membership, which consists primarily of large and medium-sized commercial operators in the 800 MHz and 900 MHz band, and large equipment manufacturers. To rectify this situation, AMTA suggests that the Commission take "revolutionary action" and reassess the regulatory and licensing framework for the 450-470 MHz band.

2. Mobex is a Board Member of AMTA, and normally supports AMTA's regulatory proposals. However, as an operator of conventional and trunked UHF licenses in approximately sixteen states, Mobex has a firsthand knowledge of the UHF band which is not represented by certain other Board Members, particularly the large 800 MHz and 900 MHz operators. For the reasons discussed below, Mobex believes that AMTA's proposal would have a harmful and irreversible impact on both the smaller commercial operators in the UHF band, like Mobex, and on the thousands of private licensees operating in the UHF band.

## II. Discussion

### A. The Proposed Auction Would Further Entrench The Power of Large Commercial Providers

3. The purpose of the Telecommunications Act of 1996 (“the Act”), is to “promote competition . . . in order to secure lower prices and higher quality services for American telecommunications consumers.”<sup>1</sup> The Commission has sought to achieve this goal through the deregulation of the telecommunications industry in general, and through spectrum auctions.

4. Unfortunately for consumers, a major criticism of the Act is that it has failed to achieve its promise of cost savings to consumers and instead has furthered the advancement of industry consolidation and increased cost brought about as a result of decreased choice of providers. For example, in testimony before Congress, Gene Kimmelman of the Consumers’ Union addressed this problem by stating that the Act:

will not deliver on its promise of broad-based competition and lower telephone prices for most consumers. With telephone monopolies continuing to merge rather than compete, and new charges constantly appearing on consumers’ phone bills, Consumers Union believes it is time for antitrust officials to redouble their efforts, and for Congress to revisit this misfiring law.<sup>2</sup>

Furthermore, a recent Wall Street Journal article on consolidation observed that:

the urge to merge has overwhelmed the compulsion to compete. Most people are still waiting for lower phone rates and better service, while the nation’s telephone giants seem intent on vying to see which one can become the biggest the fastest. Lawmakers and regulators have largely stood by and watched the procession of megadeals, hoping that the emergent landscape would eventually give rise to competition.<sup>3</sup>

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<sup>1</sup> Communications Act of 1934 As Amended by The Telecommunications Act of 1996.

<sup>2</sup> Consolidation in the Telecommunications Industry, Congressional Testimony of Gene Kimmelman, Co-Director Washington Office Consumers Union, September 15, 1998.

<sup>3</sup> Gruley, Simons, Wilke, Alarm Bells: Is This Really What Congress Had in Mind With The Telecom Act?, Wall St. J., May 12, 1998 at A1.

5. These observations are further supported by an examination of recent auctions in which small operators attempted to compete against megacompanies. For example, in the Commission's 1998 auction of the 800 MHz block of spectrum, giant Nextel Communications, Inc. ("Nextel") acquired 475 of the 525 licenses which were available, despite bidding credits and similar inducements for small businesses. In fact, the number of licenses acquired by Nextel amounted to 90% of available licenses, and an overwhelming 95% of the available spectrum.

6. Due to the capital intensive nature of the auction process, the implementation of AMTA's proposed rulemaking would spread this dual problem of reduced consumer choice and consolidation of providers to the UHF band. Competition among smaller carriers is currently thriving in this market, and will only be crushed with the implementation of AMTA's proposed rulemaking.<sup>4</sup> Consumers of UHF services can choose from among a range of options today, including obtaining their own private licenses, utilizing community repeaters, or relying upon the various commercial operators for service.

7. As is often the case with spectrum auctions, the proposed rulemaking would place the 450–470 MHz band in the hands of a few large providers, and deprive small dispatch companies of a critical and thriving market. Furthermore, AMTA's

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<sup>4</sup> Although AMTA purports to protect small providers by limiting auction winners to one license per market, Mobex's experience is that industry consolidation will prevail in the post-auction environment, particularly if the sunset period is only three years. In the meantime, these restrictions could readily be circumvented by large operators through the use of management agreements, joint ventures, strategic

proposed rulemaking would remove a cost-efficient, highly effective tool with which tens of thousands of small businesses conduct their basic day-to-day functions. The frightful prospect of consolidation in the 450–470 MHz band must not be allowed to materialize. By establishing this spectrum as an exclusive auctioned domain, the Commission would ensure that numerous licensees would be shut-out of the current, cost-efficient use of this spectrum.

**B. The Lack of Mutual Exclusivity in The 450-470 MHz Band Should Not Be Altered By The Commission**

8. As the USMSS notes in its Opposition filed in this proceeding, the private wireless industry employs a licensing mechanism that serves to avoid the creation of mutually exclusive license applications. Under current licensing procedures, licensees, when licensed on a site-by-site basis and properly coordinated by the Commission's certified frequency advisory committees, do not generate mutually exclusive applications. Instead, the frequency advisory committees coordinate around existing licensees through the application of engineering-based frequency selection processes in order to fully maximize use of the private wireless spectrum. Since there is no mutual exclusivity, there is no need for the Commission to employ a licensing mechanism such as auctions to select among competing applicants.

9. If mutually exclusive applications were to be received by the frequency coordinator – an event that rarely, if ever, occurs – the matter is readily resolved.

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investments, and similar contractual arrangements which enable one or two providers to control the post-auction marketplace.

The first application received is the first application processed and the mutual exclusivity is addressed. The Commission has sustained this process since 1986 and Mobex sees no justification for modifying these procedures in order to simply accommodate a handful of commercial providers.

**C. AMTA's Proposal Would Be Devastating For The Private Wireless Community, as Well as Smaller Commercial Operators Like Mobex.**

10. AMTA suggests that, to satisfy the short-term spectrum requirements of the private wireless industry, the Commission should restructure the way the existing private wireless spectrum is assigned and utilized. According to AMTA, the way to do this is to relocate all of the private, shared systems to 2 MHz and auction off the remaining spectrum for commercial use.

11. The Land Mobile Communications Commission ("LMCC") filed a Petition for Rulemaking discussing a crucial need for spectrum in the private wireless industry and requesting an allocation of spectrum for private mobile radio services.<sup>5</sup> In illustrating the need for spectrum within the private wireless community, the LMCC utilized a study of the channels available to new applicants in bands most heavily used by private wireless users. The study revealed that in each of the top 10 cities, channel availability in the 470-512 MHz, the 800 MHz, and the 900 MHz bands was non-existent. Because license assignments within the 450-470 MHz band are shared, the spectrum is intensely utilized by a wide number of users. The forced relocation of incumbent private wireless licensees to the 2 MHz of spectrum allocated by AMTA

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<sup>5</sup> LMCC Filing of April 22, 1998.

would cause harmful and devastating disruptions in service as well as massive interference. In essence, tens of thousands of private wireless communications facilities would be forced to function on a miniscule amount of spectrum.<sup>6</sup>

12. The assumption that it would be better for the private wireless industry to either bid at auction for spectrum against large commercial providers or give up transition to more efficient technologies lacks any basis in practicality and efficiency. Such a recommendation would fail to meet the particular needs of the private wireless industry and is not a viable solution to the current spectrum shortage.

13. To begin with, most of the companies which utilize the 450–470 MHz band are not commercial communications providers. Most are construction, educational, trucking, electric and ground water utilities, railroad, manufacturing, petroleum, airline, taxicab, automobile emergency, mining, agricultural, wireline infrastructure maintenance, and forest industry organizations. None of these industries are in the business of providing communications services, but many of these companies purchase equipment from small and medium-sized companies like Mobex. Due to the unique coverage requirements of these companies, AMTA's proposed use of geographic license areas do not meet their needs. As stated previously, instead of ensuring efficiency, this proposed auction would create an environment in which a few select licensees would acquire the private wireless industry's scarce spectrum resources.

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<sup>6</sup> Nor would these thousands of private users be placated by AMTA's proposal to offer them five auctioned licenses for a limited period of time.

14. Private wireless licensees utilize this spectrum to promote a wide range of public necessities, ranging from private safety services to public rail transportation. The resultant damage which this auction would cause would severely damage many sectors of the economy.

15. The critical communication needs of these companies would not be adequately satisfied by available commercial systems. As a result, the public interest would be better served by the continued viability of private systems rather than commercializing this band for the benefit of a select group of licensees who are in search of additional spectrum. Mobex urges AMTA to seek out the 746-806 MHz band as a more appropriate venue for its expansionist goals.

**D. AMTA's Proposed Rulemaking Is An Attempt to Offer Users Something They Do Not Want**

16. AMTA contends throughout its proposed rulemaking that "radical" action is required in order to meet the "demand for high-quality, efficient Specialized Wireless communications capability." Throughout the proposal, AMTA implies that users on the 450-470 MHz band are seeking access to advanced technologies and more robust communication capabilities. However, this unsupported claim by AMTA overlooks the fact that many of the users on this block of spectrum are small businesses who are merely looking for basic, low-cost communications. In essence, AMTA contends that individuals who are in the market for a Ford Minivan would buy a Ferrari Testarossa if Minivans were no longer widely available. As most entrepreneurs (and parents) realize,

the utility offered by a dependable, inexpensive Minivan is not substituted by the bells and whistles of a sleek, high-cost Ferrari.

17. AMTA's argument that its proposed restructuring of the 450–470 MHz band would *promote* efficiency is offered in a vacuum. In the real world, John's Plumbing Service does not want to buy Ferraris for its fleet, and if it were forced to do so, the costs of John's Plumbing Service would increase exponentially, and those costs would be passed on to customers of John's Plumbing Service. In essence, the majority of users on the UHF spectrum are willing to forgo the very high *quality* offered in other spectrum bands in exchange for ease of use, low barriers to entry, and cost-efficiency. As such, more individual licensees are able to employ this spectrum today than any other spectrum. AMTA's proposal would obliterate this feat.

#### **E. An Alternative UHF Proposal**

18. Mobex does agree with AMTA that there is a growing need for additional spectrum for users of the type that operate today in the 450-470 MHz band so that:

(1) manufacturers can increase their equipment sales to users; (2) users can choose to update their aging equipment to more efficient and feature-rich technology; and  
(3) commercial operators like Mobex can add more users to their systems, -- which are currently at or near capacity levels.

19. The FCC's refarming proceeding has dragged on for approximately ten years, and there is no certainty that the outcome of this proceeding will meet any of the above-listed objectives for increased efficiency. To the contrary, in fact, the regulatory

uncertainty brought on by this proceeding has caused many users, including public safety and private licensees, to refrain from purchasing new equipment over the past decade, or to even invest in the UHF market at all.

20. Under the current refarming plan, however, the channel center of the 25 kHz channel must remain in place when the licensee implements new 12.5 kHz equipment. This results in an inefficient situation in which a licensee has little or no incentive to voluntarily upgrade to narrowband because that licensee is only going to receive one clearly useful channel of 12.5 kHz, along with two 6.25 kHz channels which are of dubious value. Thus, there is no practical incentive for a licensee to trade-in a good 25 kHz channel for something less valuable: one 12.5 kHz and two 6.25 kHz channels.

21. Both Motorola, Inc. and UTC, the Telecommunications Association, have filed petitions for reconsideration of this frequency-center rule. In paragraph 25 of the Second Memorandum Opinion and Order, (PR Docket No. 92-235), released April 13, 1999, the FCC stated that licensees utilizing systems with linear modulation characteristics were given special dispensation from this channel center rule when the Commission permitted these so-called "asymmetrical systems" to shift their channel centers because with this technology the lower sideband is suppressed.

22. In order to increase efficiency in the UHF band, and thereby provide users with an incentive to transition from outdated equipment, the FCC should permit licensees

to split their 25 kHz channels into two 12.5 kHz channels, each with its own center frequency. This policy would, in turn, spur commercial operators like Mobex to approach users with an offer to provide them with new equipment in exchange for access to their newly created frequency. Or, commercial operators like Mobex could simply charge the users for the new equipment, and they would keep both of their 12.5 kHz channels. Equipment makers would benefit because the ability to divide channels in a private transaction would give public safety, commercial, and private users a huge incentive to upgrade their systems. Individual licensees would be encouraged to enter into voluntary negotiations with other co-channel licensees so that they could create an area of exclusive trunked operations, and then apply for a narrowband set of licenses for those frequencies in those areas. ITA and/or PCIA could serve as a clearinghouse and promoter of this concept.

23. The attraction of this proposal is that it is politically more palatable when compared to other proposals which entail forcible conversion of licenses and equipment. In particular, AMTA's latest proposal would have the Commission take back most UHF frequencies and award exclusive licenses by auction. Not only would this proposal be abhorrent to major manufacturers, utilities, and the tens of thousands of private systems utilizing this band, but existing small commercial operators like Mobex would most likely find themselves on the short end of the auction stick.

24. Rather than the "stick" approach, Mobex favors a carrot approach. Giving users a reward to convert their systems (i.e, the receipt of their newly created spectrum)

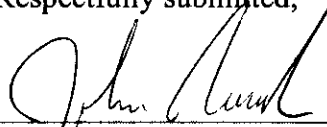
would incentivize them in a way that would ensure that existing manufacturers could upsell current UHF licensees to new products. This proposal fits well into the FCC's dual goals which it espouses are in the public interest: (1) fostering efficient use of spectrum; and (2) promoting private resolution of spectrum issues through coordinators and by private negotiation, rather than by government regulation.

### **III. CONCLUSION**

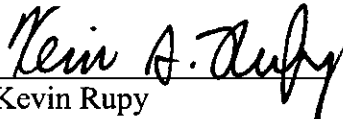
Mobex shares AMTA's belief that creative thinking should lead to new opportunities for UHF licensees. However, Mobex does not share AMTA's embrace of the auction process as a means of achieving this particular goal in this particular band. Because of the historical nature of the UHF band, with its shared use of spectrum and myriad types of licensees (commercial, private, large and small companies, etc.), Mobex believes any proposal should be sensitive to the needs of all licensees, and should employ a carrot rather than a stick. Toward that end, Mobex favors voluntary efficiency standards which would enable licensees who truly desire more modern equipment to split their channels and deploy narrowband equipment, while those licensees who do not need or desire modern whistles and bells would be permitted to continue to operate without disruption by the government.

For the Foregoing Reasons, Mobex requests the Commission to dismiss the  
Petition for Rulemaking filed by AMTA.

Respectfully submitted,



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**September 23, 1999**

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OPPOSITION was served this 23rd day of September, 1999 by hand delivery to:

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